

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

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**RONALD D. TYM**  
on behalf of himself and as parent  
and the legal representative of  
**FORREST B. TYM**, a minor,

01 APR 10 AM 10:39

*Rosemary March*  
CLERK - HENRY BORQUE

Plaintiff,

CIV 01-267 BB/LCS

Vs.

**SANTA FE PREPARATORY SCHOOL,  
JAMES W. LEONARD, CHRISTINA  
GRIFFITH, AND ROB WILDER,**

Defendants

**PLAINTIFF'S OBJECTIONS TO DEFENDANTS' PROPOSED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW;  
PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Defendant's have submitted to the Court proposed findings of fact and conclusions of law as to the matters heard and decided by the Court at the Court's hearing on March 26, 2001, on Plaintiff's request for temporary and preliminary injunctive relief.

The Plaintiff objects to the Defendants' proposed findings of fact and conclusions of law because they go light years beyond what the Court stated orally, on the record in open court, pursuant to F.R.C.P. 52(a), as being its findings of fact and conclusions of law. The Defendants' proposed findings of fact and conclusions of law represent more a "wish list" than an accurate representation of the Court's announced findings and conclusions.

12

The Plaintiff proposes the following findings of fact and conclusions of law which conform with the findings and conclusions announced by the Court in open court on the record pursuant to F.R.C.P. 52(a).

### **PROPOSED FINDINGS OF FACT**

1. Defendant Santa Fe Preparatory School (hereinafter Santa Fe Prep) is a private college preparatory school.
2. Plaintiff Forrest Tym is a student in his senior year at Santa Fe Prep.
3. Plaintiff Ronald Tym and Constance "Dakota" Blair, Forrest's parents, had Forrest tested in the Summer of 1999 by Karen Milstein, Phd for possible learning disabilities.
4. A Copy of this evaluation was provided to Santa Fe Prep in the Fall of 1999.
5. Dr. Milstein's evaluation concluded that Forrest experiences "what looks like Attention Deficit Disorder", and also "shows difficulties in both the auditory perceptual area and also in the visual perceptual area" which "interferes with the execution of relevant perceptual tasks to a problematic level", Exhibit H, pp. 10-11.
6. Dr. Milstein concluded that "this pattern of inconsistencies, considerable variability and unevenness, and perceptual difficulties is consistent with a diagnosis of a learning disability", Exhibit H, p. 7.

### **PROPOSED CONCLUSIONS OF LAW**

1. The Court has jurisdiction of the subject matter of the proceeding of March 26, 2001, pursuant to 42 U.S.C. Section 12188(a), 42 U.S.C. 12203, and supplemental jurisdiction.
2. The Court has jurisdiction of the parties.
3. Venue is proper in this Court pursuant to the provisions of 28 U.S.C. Section 1391.
4. Santa Fe Prep is an entity covered by Title III of the Americans with Disabilities Act, 42 U.S.C. §12181 et. seq. (“ADA”).
5. Plaintiff’s have failed to demonstrate that Forrest Tym suffers from a “specific learning disability” as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et. seq. (“IDEA”), which this Court concludes, as a matter of law, is required in order to constitute a “disability” under Title III of the ADA.
6. Plaintiff’s request for temporary or preliminary injunctive relief is therefore denied.
7. Because Plaintiff’s have failed to prove their federal claim as a matter of law, Defendants’ motion for a directed verdict on the merits of the ADA claim is granted.
8. With the directed verdict on the federal claim of action resolving such claim of action, this Court no longer has supplemental jurisdiction over the state law causes of action (Complaint, Fourth and Fifth Causes of Action) and therefore dismisses such causes of action for lack of jurisdiction.

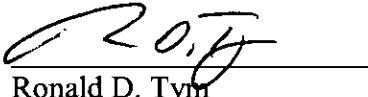
**PROPOSED ORDER ON DEFENDANTS' MOTION FOR DIRECTED VERDICT**

THIS MATTER, having come before the Court for hearing on the 26<sup>th</sup> day of March, 2001 on Plaintiffs' request for temporary and preliminary injunctive relief, and the Court having heard the testimony of witnesses, reviewed the evidence introduced, and heard the arguments of counsel on Defendants' motion to dismiss, Defendants' motion to consolidate the preliminary injunction hearing with trial on the merits, and Defendants' motion for directed verdict and the Court being duly and fully advised,

IT IS HEREBY ORDERED that the Plaintiff's request for temporary and preliminary injunction is hereby DENIED, Defendants' motion to consolidate is GRANTED, Defendants' Motion to for directed verdict as to the federal ADA claim is hereby GRANTED and the claim is dismissed with prejudice, and as to the state law claims the Defendants' Motion to Dismiss is hereby GRANTED and the claim is dismissed without prejudice for lack of jurisdiction.

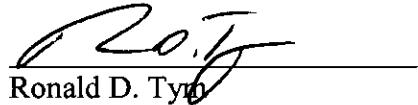
Submitted this 9<sup>th</sup> day of April, 2001.

Respectfully submitted,

  
Ronald D. Tym  
7741 N. Garfield Ave.  
Kansas City, MO 64118  
Tel: 816-691-3271  
Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent via facsimile to John F. Kennedy, Cuddy, Kennedy, Hetherington, Albetta & Ives, LLP, fax number 505-954-7373, on this 9<sup>th</sup> day of April, 2001

  
Ronald D. Tym